THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23304 OF 2005

DATED:28.10.2005

Between:

Kandukuru Suseelamma, and another

…Petitioners

And

The District Collector,

Nellore District and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23304 OF 2005

ORDER:

The two petitioners filed the present Writ Petition challenging the notification issued by first respondent under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) proposing to acquire 228 Sq.yards of land in S.No.963/3C of the petitioners for the purpose of laying road in Kavali town.

It is alleged that first petitioner and husband of second petitioner purchased vacant land of 100 Ankanams or 674.33 Sq.yards out of Acs.4.75 in S.No.963/3 (S.No.963/3C new) Kavali Bit-I Village under registered sale deed dt.26.6.1983. Presently the property is within the territory of ward No.1 of Kavali Municipality. On the northern side of petitioners' land there is canal of five feet width. Some persons

purchased the land adjacent to the canal and constructed houses without obtaining approval of the municipality. These persons left ten feet space for the road and residing in the houses uninterruptedly. The respondents now proposed to lay new road only for the benefit of these persons and there is no necessity as such for acquiring the petitioners' land. If the petitioners' land to an extent of twenty feet on the eastern side of the plots is acquired as proposed, the petitioners would be left with land with a width of seven feet which would not be useful for raising any construction.

The learned counsel for the petitioners, Sri A.V.S.S.N.Murthy submits that by the impugned notification first respondent dispensed with the enquiry under Section 5A of the Act in a routine manner and there is no urgency for invoking urgency provisions under Section 17(4) of the Act. He placed reliance on the decision of the Supreme Court in **Union of India v. Mukesh Hans**, and **Union of India v. Krishan Lal Arneja.** Nextly, he would contend that the acquisition of the petitioners' property is *mala fide* as there is no public purpose for which the land is acquired.

The learned counsel for the petitioners has placed before this Court a rough sketch of the subject land. The petitioners' site in S.No.963/3C is situated on south-eastern side of the canal abutting the six feet wide road. There is a ten feet wide road on the northern side of the canal dividing residential portion. The road of six feet width on the southern side of the ten feet width road, on the northern side of canal, is thoroughfare from the main road of thirty feet wide road on the southern road to twenty feet wide road on the north side. It is submitted by the learned Government Pleader for Land Acquisition, if the road is not widened on the southern side road from the existing six feet width, it would cause inconvenience for the people to go from twenty feet vide road to thirty feet wide road and vice versa. They have to take detour through national highway to go to either side.

There is force in the submission of the learned Assistant Government Pleader. Present acquisition is admittedly for laying road so as to widen the existing six feet road, which by any standards cannot be said to be sufficient. Therefore, this Court is not able to agree with the submission of the learned counsel for the petitioners that there is no public purpose for acquiring the land. The reliance placed on the decisions of the Supreme Court is misconceived. These decisions lay down that the acquisitioning authority should properly consider all the aspects before exercising power under Section 17(4) of the Act dispensing with enquiry under Section 5A of the Act. In this case, after hearing the learned counsel for the petitioners and the learned Assistant Government Pleader for Land Acquisition, this Court is convinced that there is urgency to lay the road as proposed and the first respondent cannot be said to have dispensed with the enquiry under Section 5A of the Act in a routine manner.

The Writ Petition, for the above reasons, is dismissed.

(V.V.S.RAO, J)

28.10.2005

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